

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Nanci E. Langley; and
Robert G. Taub

Langston Post Office
Langston, Alabama, 35755

Docket No. A2011-73

ORDER AFFIRMING DETERMINATION

(Issued December 30, 2011)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 14, 2011, Donald J. Hahn (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Langston, Alabama post office (Langston post office).² The Final Determination to close the Langston post office is affirmed.

II. PROCEDURAL HISTORY

On September 16, 2011, the Commission established Docket No. A2011-73 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On September 29, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁵

Petitioner filed a participant statement supporting his Petition.⁶ The Public Representative has not filed a brief.

² Petition for Review received from Donald J. Hahn regarding the Langston, AL Post Office 35755, September 14, 2011 (Petition).

³ Order No. 858, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 16, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, September 29, 2011 (Administrative Record). The Administrative Record includes, as Item No.47, the Final Determination to Close the Langston, AL Post Office and Continue to Provide Service by Independent Post Office (Final Determination).

⁵ United States Postal Service Comments Regarding Appeal, November 8, 2011 (Postal Service Comments).

⁶ Participant Statement received from Donald J. Hahn, October 12, 2011 (Participant Statement).

III. BACKGROUND

The Langston post office provides retail postal services and service to 51 post office box or general delivery customers and 495 rural route delivery customers. Final Determination at 2. The Langston post office, an EAS-13 level facility, has retail access hours of 8:00 a.m. to 1:00 p.m. and 2:00 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 10:00 a.m. on Saturday. *Id.*

The postmaster position became vacant on April 1, 2010 when the postmaster retired. *Id.* A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 10 transactions daily (11 minutes of retail workload). Post office receipts for the last 3 years were \$32,743 in FY 2008; \$21,530 in FY 2009; and \$21,642 in FY 2010. There are two permit customers and no postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$ 53,302 annually. *Id.* at 8.

After the closure, retail services will be provided by the Scottsboro post office or by the Grant post office.⁷ *Id.* at 2. The Final Determination states that the Scottsboro and Langston post offices are 10 miles apart. It states that the Grant and Langston post offices are approximately 9 miles apart.⁸ Delivery service will be provided by rural carrier through the Scottsboro post office. The Scottsboro post office is an EAS-21 level post office, with retail hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and 8:45 a.m. to 12:00 noon on Saturday. Two-hundred-seventy-two (272) post office boxes are available. *Id.* The Postal Service will continue to use the Langston name and ZIP Code. *Id.* at 4, Concern No. 14.

⁷ In its Response to Concern No. 1 on page 2 of the Final Determination, the Postal Service states that service can be obtained from the Atmore post office. Petitioner admits this to be true, but notes that the Atmore post office is 300 miles away. Participant Statement at 3. This lone reference to the Atmore post office is clearly an error since the only alternative post offices referred to repeatedly by the Postal Service are to the Scottsboro and Grant post offices. Final Determination *passim*.

⁸ *Id.* MapQuest estimates the driving distance between the Langston and Scottsboro post offices to be approximately 14.0 miles (23 minutes driving time). MapQuest estimates the driving distance between the Langston and Grant post offices to be approximately 34.7 miles (46 minutes driving time).

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Langston post office. Petitioner notes that his home is 19 miles from the Scottsboro post office and other businesses and churches south of Langston are much further from Scottsboro than the Postal Service indicated in its Final Determination. Participant Statement at 2-3. Petitioner contends that the service available at the Scottsboro post office is poor and many people come from Scottsboro to the Langston post office because of the better customer service offered at the Langston post office. *Id.* at 2. Petitioner also notes the Postal Service comment that service could be obtained at the Atmore post office may be correct; however, Petitioner notes that post office is 300 miles away. *Id.* at 3; see also n.7, *supra*.

Petitioner also questions the savings from the closing of the Langston post office. Petitioner notes there has been no postmaster for 18 months and, therefore, he contends those savings are inflated. In addition, Petitioner contends the additional cost for delivery service was not explained and, therefore, he contends that analysis failed to consider the additional time needed for delivering to more rural boxes and for future growth. *Id.* at 2, 4. Petitioner also notes the Postal Service failed to consider facts brought up at the community meeting including an offer to reduce the lease expense and additional development in the community. *Id.* at 4.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Langston post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Langston community; and (3) the calculation of economic savings. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Langston post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Langston post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and reduction in post office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

Id. at 3. The Postal Service contends that it will continue to provide regular and effective postal services to the Langston community in a cost-effective manner when the Final Determination is implemented. *Id.* at 3-4.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, effect on the Langston community, economic savings, and effect on postal employees. *Id.* at 8-9.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On March 16, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Langston post office. Final Determination at 2. A total of 50 questionnaires were distributed and 12 were returned. On April 11, 2011, the Postal Service held a community meeting to address customer concerns. Forty-five customers attended. *Id.*

The Postal Service posted the proposal to close the Langston post office with an invitation for comments at the Langston, Scottsboro, and Grant post offices from May 23, 2011 through July 24, 2011. *Id.* The Final Determination was posted at the Langston post office on August 22, 2011, and the Final Determination remains posted until this matter is resolved. Administrative Record, Item No. 51 at 1.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Langston, Alabama is an incorporated community located in Jackson County, Alabama. Administrative Record, Item No.16. Police protection is provided by the Jackson County Sheriff's office. Fire protection is provided by Langston Volunteer Fire Department. The community is comprised of farmers, retirees and travelers. Residents may travel to nearby communities for other supplies and services. *Id.*; see generally Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Langston community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Langston post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's response are summarized in the Final Determination.

In its comments, one customer raised the issue of the effect of the closing on the Langston community. Final Determination at 4, Concern No. 14. The Postal Service contends that it considered this issue and explains that the community identity will be preserved by continuing the use of the Langston name and ZIP Code. *Id.* Response to Concern No. 14.

Petitioner also raised the issue of the effect of the closing on the Langston community, particularly whether the carrier would be able to do all the services listed by the Postal Service if the community grows. Participant Statement at 2, 4. The Postal Service contends that it considered growth in the Langston area. *Id.* at 6-7.

Petitioner states that at the community meeting the Postal Service was informed about two new housing developments, but that these developments were not mentioned in the Final Determination. *Id.* at 4. The implication is that the Postal Service has ignored potential growth. Such an implication is, however, contradicted by the inclusion in the record of the Postal Service's Community Survey Sheet which indicates that the

Postal Service's Facilities Planning Website projects growth of 32 percent over some unspecified period of time. Administrative Record, Item No. 16 at 1.

The issue is not whether the Postal Service has ignored potential growth, but whether record information about potential growth fatally undermines the Postal Service's reliance upon the fact that there has been minimal growth in the Langston community in recent years.

The Final Determination should have included a discussion of both the past and projected growth, particularly since the Postal Service's own Community Survey Sheet projected what, in percentage terms, would appear to be significant growth. That projection does not, however, necessarily preclude the Postal Service from relying upon minimal growth in recent years to support its conclusion in the Final Determination that the closure of the Langston post office will not adversely affect the Langston community. Final Determination at 8.

Application of a 32 percent projected rate of growth to current operations of the Langston post office would produce an increase of 16 post office box or general delivery customers (51×32 percent) and an increase of 158 delivery customers (495×32 percent). Increases of these general magnitudes appear to be consistent with past levels of growth that the Postal Service has characterized as "minimal" and well within the Postal Service's ability to serve from other post offices without adversely affecting the Langston community.

Petitioner claims further that the effect on the community has been underestimated by the Postal Service because the carrier may not be able to fulfill all of the duties expected. Participant Statement at 2. The Postal Service explains this issue was considered extensively by the Postal Service. Postal Service Comments at 4; see Administrative Record, Item No. 33; Proposal at 2-8. Carriers will be able to provide most retail services provided at the post office. Postal Service Comments at 4-5. Other options exist for service on the internet at *www.usps.com*, Post Office Box Service is available at the Scottsboro post office, and alternative access options are available such as *USPS.com* and Stamps by Mail. *Id.* These explanations appear to be adequate.

The Postal Service has adequately taken the effect of the post office closing on the community into account as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Langston postmaster retired on April 1, 2010 and that an OIC has operated the Langston post office since then. Postal Service Comments at 7; Final Determination at 8. It asserts that after the Final Determination is implemented, the temporary OIC may be separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has adequately considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Langston post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Langston customers. Postal Service Comments at 4. It asserts that customers of the closed Langston post office may obtain retail services at the Scottsboro post office. Final Determination at 2. Delivery service will be provided by rural carrier through the Scottsboro post office. *Id.* at 2. The Langston post office box customers may obtain Post Office Box Service at the Scottsboro post office, which has 272 boxes available, and at the Grant post office, which has 253 boxes available. *Id.*

For customers choosing not to travel to the Scottsboro post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 2-7. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioner argues that the rural delivery service will not provide the Langston community with a maximum degree of effective and regular services. Participant Statement at 2. Petitioner states that in a rural community where many people cannot see their mailbox, they will not leave money in their mailbox for the carrier for services. *Id.* The Postal Service responds that it considered Petitioner's concerns about mail security by stating that customers may use various options to obtain postal services,

including Post Office Box Service at nearby Scottsboro post office, or alternative access options including *USPS.Com* or Stamps by Mail[®]. Postal Service Comments at 4-5.

Petitioner also questions the convenience of the Scottsboro post office for himself and other residents and businesses that used the Langston post office. Participant Statement at 2. In that connection, Petitioner claims that the Scottsboro and Grant post offices are 19 miles and 33 miles away, respectively, from his home. Petition at 1. The Postal Service does not dispute Petitioner's estimated distances, but points out the Postal Service ultimately concluded regular and effective service will be provided through the Scottsboro post office and alternate access options. Postal Service Comments at 5.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$53,302. Final Determination at 8. It derives this figure by summing the following costs: postmaster salary and benefits (\$34,759), fringe benefits (\$11,644) and annual lease costs (\$13,000), minus the cost of replacement service (\$6,101). *Id.*

Petitioner asserts that the calculations of the estimated savings are misleading. Petition at 2; Participant Statement at 2, 4. He notes that the amounts saved are based on the salary and benefits of a postmaster rather than the OIC, who receives a lower salary and no benefits. *Id.* Petitioner also noted that the estimate for the replacement rural carrier may be low since overtime or additional carriers may be needed if the area grows. *Id.* The Postal Service responds that the carrier service would be more effective than maintaining the postmaster position. Postal Service Comments at 8.

Petitioner also asserts that the person who owns the building would be willing to reduce the lease expense to keep the post office open. Petition at 2; Participant Statement at 4. The Postal Service responds that the lease cost is outweighed by the labor costs. Postal Service Comments at 8. Thus, even if the lease costs were reduced, the impact on the savings would not be substantial. *Id.*

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs unless there is a reasonable assurance that closing will actually eliminate those costs. The Langston post office postmaster retired on April 1, 2010. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67 United States Postal Service Comments Regarding Appeal, October 24, 2011, at 10; and Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 13. Furthermore, notwithstanding that the Langston post office has been staffed by an OIC for over a year, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Langston post office is affirmed.

It is ordered:

The Postal Service's determination to close the Langston, Alabama post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I dissent in this case.

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service argues that savings should be calculated based on a fulltime postmaster's salary. Yet the Langston post office has been operated by an OIC since 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal; yet on the other hand, it argues that the savings should be calculated using a fulltime position. There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Postal Regulatory Commission to correct the record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

There is also some question as to whether the Postal Service has adequately assessed the effect on service, given the travelling distances between the Langston post office and those that are offered as substitutes. As the majority opinion acknowledges, the driving distance between the Langston and Grant post offices is approximately 14 miles, while the driving distance between the Langston and Scottsboro post offices is approximately 34.7 miles. These distances are significantly greater than the 9 mile and 10 mile figures, respectively, provided in the Postal Service's Final Determination.

Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether. This closing should be reconsidered.

Moreover, the Postal Service recently announced a moratorium on post office closings.

It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium.

The citizens of Langston, Alabama and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF COMMISSIONER LANGLEY

The Postal Service did not adequately comply with 39 U.S.C. § 404(d)(1) which requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to persons served by such post office to ensure that such persons will have an opportunity to present their views. Under section 243 of the Postal Service's Handbook PO-101, August 2004, if a decision is made to continue proceeding with a discontinuance investigation, the manager, Operations, must "then develop a questionnaire and send it to customers for additional information and comments."

The Final Determination indicates that the Langston post office provides service to 51 post office box holders and 495 delivery customers. Final Determination at 2. However, the Final Determination states that 50 questionnaires were distributed to delivery customers of the Langston post office. *Id.* It appears that 496 customers were not sent the questionnaire, thereby denying them the opportunity to offer their views on the record.

Moreover, the Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The current lease does not terminate until December 31, 2014, and does not have a 30-day termination clause. The Postal Service should note that any savings from the lease will not be realized for at least 2 years.

As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings, and that the effect of a closing on a community are adequately considered.

I find that the Postal Service's decision to discontinue operations at the Langston post office is unsupported by evidence on the record and thus, should be remanded.

Nanci E. Langley